

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 26871-3-III

Respondent,

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v.

MARK ERIC DAVIS,

UNPUBLISHED OPINION

Appellant.

Kulik, J. — Mark Eric Davis was found guilty of possession of a controlled substance based upon stipulated facts. On appeal, Mr. Davis contends that the trial court erred by failing to enter written findings of fact and conclusions of law. We agree. We vacate the judgment and sentence and remand for entry of written findings of fact and conclusions of law and a judgment and sentence based on the findings of fact and conclusions of law.

FACTS

On February 4, 2008, Mark Eric Davis was found guilty of possession of a controlled substance after a bench trial. The trial court's decision was based upon

stipulated facts which the State and Mr. Davis signed and entered with the court. The court determined that entering written findings of fact and conclusions of law was unnecessary, as guilt was based upon the facts presented in the stipulated facts. The court then made an oral ruling on its determination of guilt. This appeal followed.

ANALYSIS

Mr. Davis contends that the trial court erred by failing to enter written findings of fact and conclusions of law following a bench trial on stipulated facts.

CrR 6.1(d) requires entry of written findings of fact and conclusions of law following a bench trial. As stated therein:

In a case tried without a jury, the court shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated. The court shall enter such findings of fact and conclusions of law only upon 5 days' notice of presentation to the parties.

CrR 6.1(d). “The purpose of CrR 6.1(d)’s requirement of written findings of fact and conclusions of law is to enable an appellate court to review the questions raised on appeal.” *State v. Head*, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998). An oral opinion ““has no final or binding effect unless formally incorporated into the findings, conclusions, and judgment.’” *Id.* (quoting *State v. Mallory*, 69 Wn.2d 532, 533-34, 419 P.2d 324 (1966)). When a court fails to enter written findings and conclusions,

“[r]emand for entry of written findings and conclusions is the proper course.” *Id.*

Washington law has recognized a harmless error analysis when determining whether the failure to enter written findings and conclusions will necessitate remand. *State v. Banks*, 149 Wn.2d 38, 43-44, 65 P.3d 1198 (2003). Under the harmless error analysis, the test is “whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *Id.* at 44 (internal quotation marks omitted) (quoting *State v. Brown*, 147 Wn.2d 330, 341, 58 P.3d 889 (2002)). In *Banks*, it was argued that because there were no written findings and conclusions relating to the element of “knowledge” in the crime alleged, the matter should be remanded for written findings and conclusions regarding that element. *Id.* at 43. However, *Banks* is distinguishable from the case presented here, as the court in *Banks* was able to infer a finding of knowledge from the other findings and conclusions which were entered. *Id.* at 46.

Here, the trial court not only failed to enter written findings and conclusions, but also failed to tie the facts to each separate element of the crime charged in a manner which may have otherwise led to harmless error. *See id.* at 43; *Head*, 136 Wn.2d at 622-23. Unlike *Banks*, the record here is completely devoid of any written findings or conclusions. Here, the court stated in its oral ruling:

Well, then I’m going to find as facts what is stipulated here to [sic] and

conclude, based on these facts, that the defendant has committed the crime of unlawful possession of a controlled substance, cocaine.

And based on that finding, then we're moving to sentencing?

Report of Proceedings at 3. The court did not explain how any of the facts proved any element of the crime charged, and the fact that this is a stipulated facts case does not resolve the problem. When the record is devoid of any written findings or conclusions for an appellate court to review, *Head* requires reversal. *Head*, 136 Wn.2d at 622.

The State argues that under the harmless error analysis in *State v. Riley*, this error meets the standard and, therefore, the judgment and sentence should be affirmed. *State v. Riley*, 69 Wn. App. 349, 353, 848 P.2d 1288 (1993). However, *Riley*, a case considering motions to suppress under CrR 3.5 and CrR 3.6, states that, “such error is harmless where the trial court’s oral findings are sufficient to permit appellate review.” *Id.* at 353 (quoting *State v. Smith*, 67 Wn. App. 81, 87, 834 P.2d 26 (1992), *aff’d*, 123 Wn.2d 51, 864 P.2d 1371 (1993)). Here, the oral findings do not explain how the facts presented met the elements of possession of a controlled substance and, therefore, the oral findings are insufficient to permit appellate review and fail to meet the harmless error standard.

On remand, when entering written findings and conclusions, the trial court is not free to make its determinations based upon any new evidence. *Head*, 136 Wn.2d at 625. However, “[t]he trial court is not bound by its earlier oral decision. It is free to determine

that, despite its earlier ruling, a conviction . . . is not appropriate after specifically addressing the evidence relating to each of the elements” of the crime. *Id.*

The trial court erred by not entering written findings of fact and conclusions of law, and this error was not harmless. Accordingly, we vacate the judgment and sentence, and remand for entry of findings and conclusions in accordance with CrR 6.1(d) and entry of a judgment based upon findings and conclusions.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kulik, J.

WE CONCUR:

Schultheis, C.J.

Korsmo, J.